

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and the brief submitted by claimant, the Appeals Board finds that this proceeding must be remanded to the Administrative Law Judge for additional findings.

In his Order of November 16, 1994, the Administrative Law Judge denied benefits but did not make findings or otherwise state the reason for the denial. Under K.S.A. 44-534a, the Appeals Board has the authority and the jurisdiction to review preliminary findings which address disputed issues of: (1) Whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice is timely given or claim is timely made; (4) whether certain defenses apply. These issues are deemed jurisdictional. Before the Appeals Board can exercise jurisdiction over a preliminary hearing matter, there must be a dispute involving one of those issues enumerated in K.S.A. 44-534a, or there must be a showing that the Administrative Law Judge exceeded his jurisdiction as required by K.S.A. 44-551. The record and order with which the Appeals Board is presented in this case makes a jurisdictional finding impossible.

The claimant also alleges that the Administrative Law Judge failed to consider certain evidence, specifically the deposition testimony of James Neal Arnold, taken on behalf of the respondent, subsequent to the preliminary hearing. The record does show that leave was granted to take that deposition and that the record would be kept open to a date certain in order to provide the Court with that deposition transcript. As this matter is being remanded for further findings, it should be noted that the Administrative Law Judge is entitled to consider such evidence and may, if deemed appropriate, receive such additional testimony as the Court deems necessary to make its determination on the issues presented.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that this proceeding should be, and hereby is, remanded to the Administrative Law Judge for additional findings or statement explaining the basis for the Order of November 16, 1994, or such subsequent order as the Administrative Law Judge may enter. The Appeals Board does not retain jurisdiction over this matter and the parties must file a new application for review and follow the appropriate procedures, should they be aggrieved, after they receive the additional findings and order from the Administrative Law Judge.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1995.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

cc: Joseph Seiwert, Attorney at Law, Wichita, KS  
Larry Shoaf, Attorney at Law, Wichita, KS  
George R. Robertson, Administrative Law Judge  
George Gomez, Director